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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/033,151
Filing Date: December 26, 2001
Appellants: FRAKI ET AL.

Joseph V. Gamberdell, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 25, 2005 appealing from the Office action mailed May 3, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WO-00/11827	Filler et al.	3-2000
6,684,087	Yu et al.	1-2004
6,200,216	Peppel	3-2001

6,587,835	Treyz et al.	7-2003
6,607,136	Atsmon et al.	8-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-3, 5-7, 9-12, 14-21, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over (Filler et al.), WO00/11827, in view of Yu et al., 6,684,087.

Regarding claim 1, Filler et al. disclose a method comprising:

identify a user of a computer (page 9, line 29) in a communication network from subscriber identity information of the user in communication network (normally a computer is identified via an ethernet address, and an user's ID and password (see page 2, lines 29-30 and page 16, 31-33) in a service provider or a communication network), the user enters the communication network using the computer (users are known to enter an internet through the computer); and

associate a digital collectible trading card with the user based on the subscriber identity information received from the computer (page 2, lines 17-20; page 15, lines 28-32). However, the communication network is not a cellular mobile communication network and the computer is not a cellular mobile phone. Yu et al. disclose a computer being a mobile cellular phone to enter a cellular mobile communication network and use the internet to download digital collectible trading cards as an alternative to trading data over wired connections. Therefore, as taught by Yu et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a cellular

mobile phone in a cellular mobile communication network to enter the internet, as an alternative to wired communication, and download digital collectible trading cards. Further, applicant should note that logging on to cellular mobile communication networks is similar to wire communication networks. Normally, the phone number associated with the cellular phone, the phone's SIM's number on a GSM system, or both identifies the user of the cellular mobile phone.

Regarding claim 2, Filler et al. teach the user trading the trading card with a second user (page 27, lines 12-15). The second user becomes associated with the trading card after the trade (pg. 27, lines 35-36).

Regarding claim 3, Filler et al., teach trading the trading card being performed under control of a server (pg. 27, line 15-34).

Regarding claim 5, Filler et al. teach the method further includes storing the trading card on a server and associating the trading card with the user being made at the server (pg 15, line 28 - pg. 16, line 5).

Regarding claim 6, Filler et al. teach associating indicates ownership of the trading card by the user.

Regarding claim 7, Filler et al. teach the method further includes notify the user of a given digital collectible trading card associated with a second user. The given collectible trading card is available for purchase or trade (pg. 27, line 20-22).

Regarding claim 9, Filler et al. teach the method further includes requesting to purchase the trading card before associating the trading card with the user (pg. 13, lines 30-31).

Regarding claim 10, Filler et al. teach entering an additional password at the mobile terminal (pg. 15, line 31-33). Applicant is reminded that a previous password has not been defined in claim 1 to render an additional password in claim 10.

Regarding claim 11, Filler et al., as modified above, teach the method further includes transmit a request from the cellular mobile phone to a server to send the trading card to the mobile phone; identify the user sending the request; compare the identity of the user with the user identification information associated with the trading card; and, provide the trading card to the user in response to matching the identity and the user identification information (pg. 15, lines 28 - pg. 16, line 5).

Regarding claim 12, Filler et al. teach providing the trading card to the user comprises transmit the trading card from the server to the mobile phone via the communication network; and, displaying the trading card on the mobile phone.

Regarding claims 14 and 25, Filler et al. teach the trading card includes at least one of a streamed video, an advertisement, digital music, a video clip (pg. 6, lines 9-15) and an avatar feature.

Regarding claims 15 and 26, Filler et al. teach the trading card includes at least one dynamic user-specific feature (pg. 2, lines 4-6).

Regarding claim 16, Filler et al. teach the trading card comprises data information (pg. 6, line 11), and the method further comprises updating data information of the trading card in real time based on a real event corresponding to contents of the trading card (col. 2, lines 6-11).

Regarding claim 17, Filler et al. teach updating data information of the trading card being done on request of the user (pg. 25, 2-8). Applicant is reminded that the information is accessible by a link upon being clicked by a user.

Regarding claim 18, the method further comprises adding an indicator including a certain price for the trading card (pg. 2, line 12-14).

Regarding claim 19, Filler et al., as modified above, teaches the communication network includes a cellular mobile communication network.

Regarding claim 20, the server stores digital collectible trading cards and association information identifying owners of the trading cards (pg. 9, line 3-4).

Regarding claim 21, Filler et al. disclose a digital collectible trading card system in a communication network comprising the communication network, at least one computer, and a server communicating with the computer via the communication network. However, the communication network is not a cellular mobile communication network or the computer is a mobile cellular phone. Yu et al. teach a mobile cellular phone in a cellular mobile communication network as an alternative setup to transfer data between devices in wireless connections versus wired connections. Therefore, as taught by Yu et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the mobile cellular phone in the cellular communication network as wireless connection instead of a wired connection.

Considering the modification, the phone is capable of displaying and controlling of at least one digital collectible trading card associated with a user of the mobile phone. The server is capable of storing the trading card and associating the user with the trading card. Associating is based on subscriber identity information of the user in the mobile network received from the phone. Applicant is reminded that on a GSM network, identity information of the subscriber to the communication network is stored in a

phone's SIM card. Associating messages, pictures, files, or audio has been known to occur when the cellular phone logs into the system.

Regarding claim 23, as modified above, Yu et al. teach the communication network including mobile network and internet. The mobile network is selected from a group consisting of GSM, GPRS, and UMTS.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Filler et al., WO00/11827, in view of Yu et al., 6,684,087, as applied to claim 2 above, and further in view of Beuk et al., 5,774,673.

Regarding claim 4, Filler et al., as modified above, teaches trading the trading card with the second user includes storing the digital trading card at a first mobile terminal and transferring the trading card from the first mobile terminal to a second mobile terminal. However, trading is not transferred via a wireless communication. Beuk et al. teach in Figure 1 trading data between a first device and a second device via a wireless communication (infrared communication) to communicate and share files wirelessly. Therefore, as taught by Beuk et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to transfer the digital trading cards between two cellular mobile phones via a wireless communication to trade the trading cards.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Filler et al., WO00/11827, in view of Yu et al., 6,684,087, as applied to claim 11 above, and further in view of Peppel, 6,200,216.

Regarding claim 13, Filler et al., as modified above, fails to disclose providing the user with the digital collectible trading card comprises providing the trading card for view on the mobile terminal for a limited period of time only. Peppel teaches, on column 6, in lines 29-37, providing the trading card for view on the mobile terminal for a limited period of time only to generate scarcity of the trading cards. Therefore, as taught by Peppel, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the trading card to the user for a limited period of time only to generate scarcity of the trading cards.

Claims 8 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Filler et al., WO00/11827, in view of Yu et al., 6,684,087, as respectively applied to claims 1 and 21 above, and further in view of Treyz et al., 6,587,835.

Regarding claim 8, applicant is reminded that cellular communication networks keep location information of the phones including the phone of the user in the network as taught by Filler et al. in the modification above. However, Filler et al., as modified above, fails to determine vicinity of a second user based on the location information of the mobile phone of the user and of the mobile phone of the second user. Treyz et al.

teach determining vicinity of a second user based on location information of a mobile phone of a user and of a mobile phone of a second user to find proximity of the second user with respect to the user (col. 45, lines 21-30). Therefore, as taught by Treyz et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine vicinity of a second user based on the location information of the mobile phone of the user and of the mobile phone of the second user to find the proximity of the second user with respect to the user.

Regarding claim 24, given the method in claim 8 above, the cellular communication network requires a location register to locate the position of the cellular phone. Therefore, as taught by Treyz et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a location register in the cellular communication network to determine vicinity information of a second cell phone user from a first cell phone user.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Filler et al., WO00/11827, in view of Yu et al., 6,684,087, as applied to claim 21 above, and further in view of Atsmon et al., 6,607,136.

Regarding claim 22, Filler et al., as modified above, fails to disclose the system further including a digital physical trading card wirelessly communicating with the cellular phone. Atsmon et al., 6,607,136, teach in Figure 1 a system further including a

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digital physical trading card **10** wirelessly communicating with a device **14**. However, the device as shown in Figure 1 is a computer instead of a cellular mobile phone.

Atsmon et al. suggests that the device 14 can be a cellular phone to make a sale transaction without the need of a smart trading card reader (col. 2, lines 34-38).

Therefore, as taught by Atsmon et al., it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the digital physical trading card wirelessly communicating with the cell phone in Yu et al. to make a sales transaction without the need of the smart trading card reader. Applicant is reminded that a computer, a PDA, a laptop computer, and a cellular phone are equivalent devices that function as a computer and the physical trading card is capable of presenting the digital collectible trading card transferred thereto independently of the cellular phone.

(10) Response to Argument

In respect to claim 1, appellants have argued that both Filler et al. and Yu et al. as combined do not recite all the features of claim 1; that the combination does not "identify a user of a cellular mobile phone from subscriber identity information"; that Filler has no disclosure related to cellular mobile phones and no disclosure related to identifying a user of a cellular mobile phone from subscriber identity information; and that Yu et al. is non-analogous art because Yu et al. is not in the same field. In response, it is the combined teachings of Both Filler et al. and Yu et al. that teach the method as claimed. The fact that Filler et al. do not disclose cellular mobile phones does not obviate the fact Filler et al. identifies a user from a subscriber identity

information. Filler et al. even suggests, on page 10, lines 8-9, "any area communications network implementation with connectivity to a server" is possible and not limited to the network described. The motivation is found from this passage because Filler et al. suggest using other forms of communication networks. Yu et al. merely teach that a cellular phone has been used to obtain digital image files, as a digital collectible trading card is merely a digital image file, and therefore, a cellular network to display images, i.e., collectible trading cards on a cellular network is taught by the prior art. Given that Fuller et al. teach the method with computers using a wired connection instead of a cellular network, it would have been obvious to one of ordinary skill to use a cellular phone in a cellular mobile communication network as an alternative form of "an area communication network". With respect to the non-analogous argument, Yu et al. are related to the same field of endeavour. The field of Yu et al. relates to cellular networks and displaying image files on cellular phones. Therefore, Yu et al. are concerned with the same cellular technology. The only distinction is on the terms used in the application. For instance, appellants label the digital image file to "a digital trading collectible card"; yet, the digital trading collective card is by no means different than that of Yu et al. when the card is merely a digital image file to be displayed on a cellular phone.

With respect to claim 21, appellants present the same arguments as made for claim 1. In response, given the method performed by the combination of Filler et al. and Yu et al., the system used to perform the method is inherently present. Therefore, the

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system, as combined by the teachings, will include a cellular mobile phone, and a server communicating with the cellular mobile phone via a cellular mobile communication network.

With respect to claims 2-20 and 22-26, no separate argument has been made by appellants for the patentability thereof apart from independent claim 1.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Ernesto Garcia

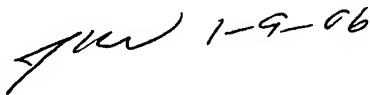


Conferees:

Daniel P. Stodola



John Weiss



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600